

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL EUGENE ASHBY,
Petitioner,

Case No. C03-5385RJB

v.

ALICE PAYNE,
Respondent.

ORDER DENYING
CERTIFICATE OF APPEALABILITY

This matter comes before the Court on the Petitioner's Notice of Appeal. Dkt. 86. The Court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. § 2253(c)(3). The Court has reviewed the record herein.

I. PROCEDURAL HISTORY AND BACKGROUND

On April 27, 2007, U.S. Magistrate Judge J. Kelley Arnold issued a Report and Recommendation, and reported that the 540 early release time credits, which formed the basis of Petitioner's habeas claims, were returned to him in 2002. Dkt. 81. As Petitioner had already received the relief he sought, Judge Arnold recommended dismissal of the petition. *Id.* On May 23, 2007, the Report and Recommendation was adopted, and the petition dismissed. Dkt. 84. Petitioner has now appealed to the U.S. Court of Appeals for the Ninth Circuit. Dkt. 86.

II. DISCUSSION

A. STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a

1 Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that
2 reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different
3 manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v.*
4 *McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).
5 When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason
6 would find it debatable whether the petition states a valid claim of the denial of a constitutional right and
7 that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.
8 *Slack* at 1604.

9 **B. CERTIFICATE OF APPEALABILITY**

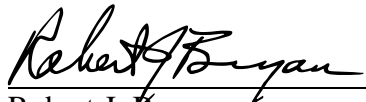
10 Petitioner, here, has failed to make a “substantial showing of the denial of a constitutional right.”
11 28 U.S.C. § 2253(c)(3). Moreover, Petitioner has not established that reasonable jurists could debate
12 whether, or agree that, the petition should have been resolved in a different manner or that the issues
13 presented were adequate to deserve encouragement to proceed further. *Slack* at 1604. The Certificate of
14 Appealability should be denied.

15 **III. ORDER**

16 Accordingly, it is hereby **ORDERED** that Petitioner’s Motion for a Certificate of Appealability
17 (Dkt. 86) is **DENIED**.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
19 party appearing *pro se* at said party’s last known address.

20 DATED this 2nd day of July, 2007.

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23 Robert J. Bryan
24 United States District Judge
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